IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (LODGING) NO.853 OF 2007

Ronnie D'Costa .. Petitioner.
Vs.
Eastern International Hotels Ltd. .. Respondent.

Mr.Ashish Kamat i/b Mr.Godfrey D'Silva for petitioner
Mr.C.U.Singh with Sarika Deshpande i/b Haresh Mehta & Co. for the respondent.

CORAM : D.B.BHOSALE, J.
DATED : 10TH JULY, 2007.

P.C.:

. Heard learned counsel for the parties.

2. Rule, returnable forthwith. Mr.Singh, learned senior counsel waives service for the respondent.

3. By this writ petition, the petitioner has impugned an order dated 6.2.2006 passed on the application at Exhibit U-11 in Reference (IDA) No.504 of 2001 rejecting the said application filed by the petitioner-employee seeking amendment of his pleadings. The learned Judge after quoting section 16A of the Industrial Disputes (Bombay Rules), 1957 recorded his reasons in paragraph 6 of the order. Paragraph 6 reads thus:

> "6. It is the discretion of the court and may allow at any stage of the proceeding amendment to statement of claim or written statement filed by the party. But in spite of having knowledge as stated earlier, the second party preferred to file this application at belated stage when it was asked in the cross examination about his duty and functions. In the state of reason, I find no force in contention of Mr.Choubal, Advocate that second party will suffer irreparable loss and it is necessary for the purpose of deciding issue and determining the

> real issue, to allow to carry out the proposed amendment. Hence, I hold that second party failed to prove prima facie that, this court is required to allow the application for amendment. Hence, I answer point No.1 in the negative."

4. I heard Mr.Singh, learned counsel for the respondent who invited my attention to cross examination of the petitioner wherein he has given following admission: "It is not true that Sr.Captain was also shift incharge. It is true that in any statement of claim, no duties and responsibilities are mentioned as Sr.Captain". He submitted that after giving aforesaid admissions in the cross examination the petitioner cannot now be allowed to carry out amendment of his pleading, allowing him to mention responsibilities and duties of Sr.Captain. I perused the impugned order and the cross examination of the petitioner. In my opinion, by allowing the petitioner-employee to mention the nature of duties and responsibility by way of amendment will not cause any prejudice to the respondent-employer and in the interest of justice the court below ought to have exercised its discretion and allowed this application. This amendment will not change the nature of the case set out by the petitioner and by no stretch of imagination it could cause irreparable loss to the respondent-company. In the circumstances this writ petition is allowed in terms of prayer clause (a) of the petition. The petitioner to carry out amendment within ten days from today.

It is open for the respondent-company to file additional pleading if they so desire. The Labour Court to proceed with further hearing after the amendment is carried out by the petitioner. The petition is disposed of.

4. An authenticated copy of this order be made available to the parties.

(D.B.BHOSALE, J.)